



Office of the Attorney General

State of Texas

January 30, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Steve Spaw, P.E.
Executive Director
Texas Air Control Board
12124 Park 35 Circle
Austin, Texas 78753

OR92-45

Dear Mr. Spaw:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14232. We have considered the exception you claimed, specifically section 3(a)(10), and have reviewed the documents at issue. We note you also raise section 381.022 of the Health and Safety Code which is incorporated into the Open Records Act under section 3(a)(1). As you have requested that we not disclose the name of the company which submitted the information alleged to be confidential to the Air Control Board, we have not followed our usual practice of notifying the company of the request for information relating to it and asking the company to submit reasons why its information should be held confidential. See V.T.C.S. art. 6252-17a, § 7(c).

In Open Records Decision No. 552 (1990) we noted that where, pursuant to section 7(c), a prima facie case is made that information constitutes a trade secret, we must accept such claim as valid, as to do otherwise could deprive a third party of a valuable property right without an opportunity to be heard before a tribunal empowered to resolve the question of fact. In this instance, as the owner of the alleged trade secrets has had no notice of this request for information, we are of the opinion that every possible inference must be made in favor of the confidentiality of the information. Accordingly, we find the requested information is excepted from required public disclosure under sections 3(a)(1) and 3(a)(10) of the Open Records Act.

We note that the requestor of the information, the Environmental Protection Agency, in its brief regarding this request for an Open Records Decision, states:

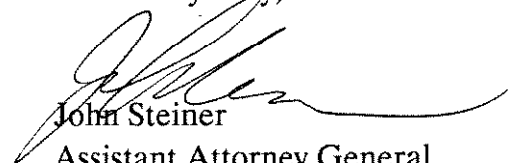
TACB's request seeking an opinion pursuant to section 3 of the Texas Open Records Act, was made in response to a letter from the EPA Region 6 Regional Counsel, dated November 6, 1991. By making this request and submitting this brief before the Attorney General, EPA shall not be deemed to be subject to the jurisdiction or authority of either the TACB or the Attorney General of Texas. Indeed, EPA specifically asserts, without limitation, that in this matter neither EPA, nor the United States of America, are subject to , or bound by, Texas law.

This brief has assumed for the sake of argument that the documents in question are trade secrets. . . .

The Air Control Board has invoked the advisory authority of the Attorney General under section 7 of the Open Records Act. Pursuant to that authority, we find the requested information confidential and advise that it may not be released under the authority of the Open Records Act. *See also* Attorney General Opinion H-836 (1976). EPA's claim appears to be based on the theory that federal law gives them a right, independent of the Open Records Act, to compel the Air Control Board to disclose the requested information to them. The Air Control Board has not asked, and we do not address, whether any such claim is valid. Whether a law outside the Open Records Act gives a special right of access to EPA in this matter is beyond the scope of an open records decision under section 7 of the Open Records Act. We find only that the Open Records Act does not compel disclosure of the requested information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-45.

Yours very truly,


John Steiner
Assistant Attorney General
Opinion Committee

JS/lb

Ref.: ID# 14232

Enclosure: Open Records Decision No. H-836

cc: George R. Alexander, Jr.
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